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PREMIUM COUPONS IN INTERSTATE COMMERCE

A manufacturer in another state inserted premium coupons in packages of merchandise, which were then enclosed in larger parcels and shipped into Florida, passing through wholesale and retail dealers to the ultimate purchaser. The latter redeemed, according to the usual course of business, by procuring a premium, which was transmitted to him either directly from the manufacturer or from some appointed agency in another state. The state of Florida imposed a license tax upon the coupons in the hands of the retail merchant. *Held,* that the coupons were not protected from the tax under the interstate commerce clause of the Federal Constitution.[1]

If regarded as a chattel, the coupon in question was clearly an article of commerce, as having a money value in the market by

[1] *Rast v. Van Deman & Lewis Co.,* 36 Supr. Ct. Rep. (U. S.) 370.

virtue of the premium to be drawn by it.[2] This was conceded in the principal case.[3]

The coupon was, therefore, at some time within the protection of the interstate commerce clause. This protection, once attached, is not withheld until the completion of the original transaction pursuant to which the importation was made. A line of decisions brings out clearly the principle that it is not the transfer of the legal title, nor the termination of the original continuous transit in the physical sense, which marks the end of the interstate commerce relation, but the fulfillment of the immediate purpose of the importation.[4] Thus, if a principal ships goods across a state line to his agent, who stores and eventually delivers them pursuant to the orders of customers, the interstate transaction terminates with the storage of the goods.[5] Similarly, if a peddler receives goods from without the state and subsequently sells them as agent of the shipper, the delivery to the peddler fulfils the immediate purpose of the importation.[6] Where, on the other hand, the shipment is made by a principal in one state to an agent in the other, the latter distributing pursuant to the contracts previously made between the principal and the purchaser, delivery to the purchaser is necessary to consummate the interstate transaction.[7]

At what point is the immediate purpose of the shipper fulfilled in the principal case? The court places it at the sale of the original packages. This may be conceded so far as the merchandise contained in the packages is concerned. But does the coupon necessarily partake of the character of the merchandise in this respect? It was not directed to, nor intended for, the intermediate dealers. Nothing is made to turn in the case on the question whether the latter were aware of the existence of the coupon or not. In either case, it was with the retail purchaser only that the manufacturer dealt, so far as the coupon was concerned. All other parties were mere conduits between the two. In the words of the principal case, "Detach the importation from the retail sale,

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[2] *Champion v. Ames*, 188 U. S. 321.

[3] Prin. case, 376.

[4] *Adams Express Co. v. Iowa*, 196 U. S. 147; *Rhodes v. Iowa*, 170 U. S. 412.

[5] *American Steel & Wire Co. v. Speed*, 192 U. S. 500.

[6] *Machine Co. v. Gage*, 100 U. S. 676; *Emert v. Mo.*, 156 U. S. 296.

[7] *Norfolk W. R. Co. v. Sims*, 191 U. S. 441. See *Kehrer v. Stewart*, 197 U. S. 60, 65.

consider only the transportation to the state, of merchandise in its original package, * * * and there may be interstate commerce, but *so detached and so considered the importations are left without purpose, the scheme without execution.*"[8]

The court, however, applies rigidly the original package rule. Yet this rule is merely one of several guides to the determination of when the interstate transaction has ended.[9] When the purpose of the shipper clearly was *not* fulfilled with the breakage of the original package, the rule does not apply. This is well recognized in cases where agents receive goods in the original package, then break the package and deliver to customers in fulfillment of the contracts of the principal.[10] The shipment in the principal case was not, indeed, pursuant to a preëxisting contractual relationship between the manufacturer and the ultimate purchaser. Nevertheless it was in consummation of a direct dealing between them.

Admittedly the holding of the principal case involves the exclusion of congressional regulation of the coupons after the sale in the original package.[11] But has not Congress the power to authorize this traffic, and should it not have also the power to protect it from state interference that would render the traffic not merely valueless but devoid of meaning? "It is inconceivable that the power to authorize this traffic * * * should cease at a point when its continuance is indispensable to its value."[12]

The principal case dismisses with a word the effect of the ultimate redemption by premium in determining the interstate character of the transaction.[13] This, it is submitted, is to ignore a serious difficulty. Numerous decisions have held that a contract may partake of the character of interstate commerce, not from the relative positions of the contracting parties, but from the nature of the performance contemplated.[14] Is not the transmission of a coupon having in view a redemption by the delivery of a premium across state lines, one of the "initiatory and inter-

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[8] Prin. case, 376.

[9] *Cook v. Marshall,* 196 U. S. 261.

[10] *Caldwell v. N. C.,* 187 U. S. 622; *Rearick v. Penn.,* 203 U. S. 507.

[11] Prin. case, 376.

[12] *Brown v. Md.,* 12 Wheat. (U. S.) 419, 446-7.

[13] Prin. case, 375.

[14] *Robbins v. Shelby Co.,* 120 U. S. 489; *McCall v. Cal.,* 136 U. S. 104; *Addyston Pipe, etc., Co. v. U. S.,* 175 U. S. 211; *Swift v. U. S.,* 196 U. S. 375; *Stockard v. Morgan,* 185 U. S. 27.

vening acts and dealings that directly bring about (a) sale or exchange" by interstate commerce?

That foreign insurance policies,[15] foreign bills of exchange,[16] and contracts for future delivery,[17] are not within the protection of interstate commerce is established. None of these contracts, however, when considered with reference to the usual methods of performance, necessarily contemplate the use of interstate channels.[18] Very different is the contract between the sender and the recipient of the premium coupon. This necessarily contemplates the delivery of a commodity, or its money equivalent, from without the state.

Both as a commodity, of present value, therefore, and as a contract for a future performance, we submit that the premium coupon should have been regarded as within the protection of the interstate commerce clause.

C. R. W.

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[15] *Paul v. Virginia*, 8 Wall. (U. S.) 168.

[16] *Nathan v. Louisiana*, 8 How. (U. S.) 73.

[17] *Ware v. Mobile*, 209 U. S. 405.

[18] Ib. 413. "In neither class of contracts, for sale or purchase, was there necessarily any movement of commodities in interstate traffic because of the contracts made by the brokers."